



MINUTES

**CITY OF SCOTTSDALE FIRE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
7:30 a.m., Thursday, July 16, 2009
Human Resources Verde Conference Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Todd Caverner, Elected Member
La Verne Parker Diggs, Citizen Member/Merit Head
Steve Springborn, Elected Member (participating by telephone)

ABSENT: Jeffrey Burg, Citizen Member

STAFF: Mike Anthony, Esq.
Lauran Beebe
Chanda Washington
Valerie Wegner

OTHERS: Jim Bagmeli
David Bowman, Fire Engineer
Aren Hansen
Obie Henney
Chief Willie McDonald
Victor Valliere, Administrative Services Director of Fire Dept.
Jerry Yaz

Call to order:

Chairman Cross called the meeting to order at 7:40 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's excused absence.

Roll call:

A formal roll call confirmed the members present as stated above.

1. **Introduction of La Verne Parker Diggs as the Newly Appointed Citizen Member/Merit Head PSPRS Fire Local Board Member.**

Chairman Cross invited the new Board member to introduce herself. Board Member Parker Diggs explained that she is the Managing Executive Director of Human Resources and is looking forward to working with the Board.

2. **Consideration of the A.R.S. Sec. 38-844 Retirement Application of Fire Engineer David Bowman.**

Chairman Cross announced that Board Member Springborn was participating in today's meeting by telephone.

Ms. Washington summarized that Fire Engineer Bowman's work-related back injury occurred on August 18, 2008 and his two-page application lists several doctors that he has seen. She explained that the IME doctor appointed by the Board had answered four required questions supplied by staff starting on page 17 of the handout.

Ms. Washington reported that a copy of all medical records, worker's compensation information, and other information supplied to the City by Fire Engineer Bowman had been provided to both the Board and Fire Engineer Bowman. She noted that a complete copy of this information was available for review at today's meeting.

Chairman Cross invited Mr. Anthony to provide an overview of the procedures and responsibilities the Board must follow during the consideration of Fire Engineer Bowman's retirement application.

Legal Direction:

Mr. Anthony discussed the fact that the Board members have the authority to make decisions about whether any claimant of the PSPRS for the City of Scottsdale is eligible to receive pension benefits. He explained that the Board's decision must be based on evidence provided by its appointed IME in addition to the consideration of any outside documentation supplied by the applicant.

Mr. Anthony suggested that the Board determine whether it was satisfied with the IME report, whether additional questions were necessary, or whether a second opinion was necessary. He requested that the Board recess into Executive Session if they deemed it necessary to obtain legal advice about the meaning of the statutes.

Applicant Testimony:

Chairman Cross invited Fire Engineer Bowman to tell the Board about the accident, his experience since it occurred, and what condition he is in now. Mr. Anthony swore in the witness before he provided testimony and Mr. Bowman confirmed that he was the Fire Engineer of Engine 602, B shift.

Mr. Bowman recalled that his unit responded to an emergency at 68th and Cherry Lynn and he and the PMTs lifted a woman who was giving birth onto a gurney. While bending to pick up the gurney his body was twisted while his legs remained straight. He heard a loud pop from just below his knees when he bent. He broke out in a sweat and had to cradle the gurney on his thigh until someone took over for him. Once he was back at the fire station, Mr. Bowman chose not to fill out an injury report and decided to wait and see how he felt. The following day he experienced increasing pain and was taken to Occupational Health by fellow firefighters.

Mr. Bowman recalled that x-rays and MRIs were taken, pain medication was prescribed, and the hospital staff referred him to STI for rehabilitation in case he had pulled something in his back. He stated that on his first day of rehab his body locked up when he was put face down on a table (and it took four people to hold him down due to the excruciating sciatica pain).

While he was at STI, Dr. Levinton called him and directed him to go to the hospital. After numerous CT scans, MRIs, and x-rays were taken at the hospital he was informed that a herniated disc in his back had exploded and fragments had landed on his sciatic nerve.

Several back doctors and spinal surgeons suggested an operation that might allow him to return to work. He selected Dr. McLean to perform the surgery on September 15th.

Following the surgery he returned home the same day but became dizzy, with severe headaches, numbness in his legs and a fever of 104. When his spouse took him to see Dr. McLean the next day he collapsed in the parking lot and the doctor's office brought him inside in a wheelchair.

Dr. McLean ordered emergency surgery at John C. Lincoln North Mountain Hospital two days after this incident. The surgery was postponed for a few days due to complications caused by a blood clot on his spine. He was prescribed vancomycin to treat the staph infection, MRSA. The infectious disease staff were unable to determine what had caused his fever.

Mr. Bowman stated that once the doctor received the go-ahead on the surgery they found that the blood clot on the spine had been eradicated by the antibiotics. During the surgery they found that the infection had destroyed his disc.

He had a second operation that also failed and the infection was increasing and causing his legs to feel as if they were going to explode. Dr. McLean's office informed him that they had done all they could and referred him to Dr. Komar at Scottsdale Surgical Center for pain management.

Mr. Bowman found no relief after receiving an epidural and when he went to have the second epidural two weeks later he almost came off the table due to the excruciating pain. The next day he called Dr. McLean's office to tell them his ankles had swelled to the size of his knees and started turning black and blue; and he was having trouble breathing. Dr. McLean referred him back to Dr. Komar, who prescribed a shot of Toradol and informed him there was nothing else he could do.

He had another high fever and ended up in ICU at John C. Lincoln Hospital where they prescribed Lovenox and put him on a heparin drip to treat more blood clots as well as morphine for the pain during his eight-day stay.

Mr. Bowman contacted Erin Taylor and Chanda Washington in December and they referred him to Dr. Edward Dohring, who found that he had multiple fragments from his disc disintegrating as a result of the first two surgeries. Dr. Dohring ordered a Doppler ultrasound at Desert Valley Radiology. During the procedure they found two blood clots in his left leg which were approximately 94% occluded and they called an ambulance to take him to the hospital.

He explained that during this stay in the hospital his medication was switched from Lovenox to zyvox due to an allergic reaction. The day after he left the hospital his medication was switched to Benadryl because he broke out in hives and had difficulty breathing.

In order to prepare for his next surgery Mr. Bowman went to Scottsdale Osborn to have a PIC line installed in his right arm and they hit a nerve. Since then, his arm has been numb from the elbow down.

A nurse assigned to come and clean the PIC line found that the end of the catheter was sitting on the superior vena cava on top of his heart, which caused a heart flutter every time the PIC line was flushed. He was referred to a cardiologist who ordered a Dennison stress test as well as MRIs, CTs, and x-rays, finding that his heart was healthy.

Mr. Bowman's symptoms escalated and surgery at Scottsdale Healthcare Shea was scheduled for February 6, 2009. He recalled fainting during a barbeque at his home before having surgery. He was taken by ambulance to John C. Lincoln Deer Valley Hospital, where they found nothing wrong.

He woke later with chest pains and breathing difficulties and went to Scottsdale Healthcare Osborn. During his stay his medication was delayed because of the tests being run. Staff finally gave him all his meds at once, causing an overdose.

Dr. Dohring ran into complications during the six and a half hour surgery as a result of the scarring, disc fragmentation, and damage caused by the infection.

Mr. Bowman developed a clot in the arm where the PIC line was installed before his February 6, 2009 surgery. As a result Dr. Dohring chose to install a Gunther Tulip Vena Cava Filter to catch the blood clots before doing surgery. The very next day he developed approximately five more blood clots. He called Father Carl and received the last rites.

Mr. Bowman reported that Dr. Dohring installed the filter and then proceeded to complete the seven-hour surgery wherein a bone graft was taken from his left hip, a new disc was installed, and S5-L1 was fused and caged.

Applicant's Current Condition:

Mr. Bowman continues to have excruciating headaches, leg pain, and cannot sleep at night. He receives two injections of 30 milligrams of morphine on a daily basis and must continue to take Coumadin for the rest of his life.

He now needs help getting dressed and easily bruises if he bumps into anything. He expressed his frustration with doctors who have told him that it is all in his mind and he must get his head well.

Mr. Bowman said the doctors' only solutions are to try different medication or surgery and stated that he would not have any more surgeries. He continues rehabilitation three times a week and his progress has been one step forward and two steps back. Mr. Bowman elaborated that he has trouble eating and when he overeats he has to take medication. He wears a brace and his right leg and ankle are black and blue.

In closing, Mr. Bowman reported that the doctors want to try more injections and medication for pain management and he believes that his body cannot take much more abuse.

Discussion:

Discussion ensued regarding Fire Engineer Bowman's concern that he could only obtain the rest of his medical records with a subpoena. Mr. Hansen clarified that he was referring to the case worker notes and records which are restricted by State statute.

Mr. Anthony recommended clarification of the physical references made by Fire Engineer Bowman during his testimony. He explained that when the applicant said "from here to here" he was referencing his right wrist to his right elbow, when he referenced "this arm" he was pointing to the right arm where the PIC line was installed, and when he said "right here now" he was pointing to the left arm's PIC line.

Chairman Cross explained that he would begin the discussion by going over each question asked and answered by the IME doctor. He stated that although some of the doctor's answers were a bit muddy, he was able to resolve the concerns that arose.

Q1. Does Mr. Bowman have a physical or mental condition which totally prevents him from performing a reasonable range of duties within the employee's job description?

A1. In my opinion an individual who does undergo this procedure successfully with no evidence of problems could possibly perform these activities...

In this case the Claimant presents with a failed back surgery syndrome. And I do not anticipate that he would return to work as a firefighter.

Q2. Does Mr. Bowman have a physical or mental condition which permanently prevents him from performing a reasonable range of duties within the employee's job classification?

A2. The Claimant could return to work in a restrictive capacity. In that regard, it would be entirely reasonable in my opinion, for the claimant to return to work with restrictions of no lifting greater than 40 pounds, no climbing ladders, infrequent bending through the lower back, and the ability to change positions periodically from standing to sitting.

Chairman Cross expressed his concern that a firefighter should be able to lift over 40 pounds in order to get someone out of a burning building.

Q3. Do you feel that Mr. Bowman's disabling condition or injury was incurred in the performance of Mr. Bowman's duty as a fire engineer?

A3. The spinal related complaints did originate with the incident at work on 8/18/08.

Q4. Does Mr. Bowman's disability result from a physical condition or injury that existed or occurred before the claimant's date of membership in the PSPRS?

- A4. For your information, Mr. Bowman began employment with the city as a full-time fire fighter on April 4th, 2005. The answer is no. Although the records do reveal the Claimant did have a history of intermittent sciatica prior to the incident on 8/18 of 08, it is clear that this particular incident resulted in the chain of events leading to the current situation.

Chairman Cross summarized that according to the doctor's final answers it was obvious that the Applicant qualifies for accidental disability retirement benefits under the statute. He invited the Board Members to present questions and comments pertaining to Fire Engineer Bowman's testimony and physical abilities.

Board Member Cavner explained that he had known Fire Engineer Bowman "forever," and noted that he loved his job more than anybody he has known and was not the type of person to fake his injuries.

Board Member Springborn agreed with Board Member Cavner's comments and added that Fire Engineer Bowman had always been able to fight through injuries and pointed out that his injuries were disabling him from having a normal life. He voiced his disappointment in how the doctor phrased responses in his IME report without having full knowledge of what the Applicant has experienced.

Board Member Springborn stated that the doctor's answers clearly indicate that the Applicant qualifies for accidental disability benefits and Board Member Diggs agreed with his comment.

In response to Chairman Cross' inquiry regarding whether any other matters need to be addressed by the Board before voting, Mr. Anthony stated that they must allow Fire Engineer Bowman to present additional testimony and/or witnesses as well as an opportunity to question the IME doctor by telephone.

Board Member Springborn made a motion to approve the accidental disability application of Fire Engineer Dave Bowman according to the final calculations established by Scottsdale human resources, and Board Member Cavner seconded the motion.

Ms. Wegner recalled that Mr. Anthony recommended making four separate motions, each addressing a question posed to the IME doctor. Chairman Cross requested that Board Member Springborn withdraw his motion, which he did.

The Board made a motion in response to each IME question resulting in a unanimous vote on all four motions.

Chairman Cross explained that although the application still had to be reviewed on the state level before the benefits would begin, staff would send the PSPRS the Applicant's paperwork for quick processing.

He emphasized that Fire Engineer Bowman would always be a firefighter and urged that he not hesitate to ask for help from his friends during the tough emotional road ahead.

BOARD MEMBER CAVNER MOVED THAT THE APPLICANT HAS A PHYSICAL OR MENTAL CONDITION WHICH TOTALLY AND PERMANENTLY PREVENTS HIM FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE FIRE ENGINEER CLASSIFICATION. BOARD MEMBER SPRINGBORN

SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

BOARD MEMBER CAVNER MOVED THAT THE APPLICANT'S DISABLING CONDITION WAS INCURRED IN THE PERFORMANCE OF HIS DUTIES AS A FIRE ENGINEER. BOARD MEMBER SPRINGBORN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

BOARD MEMBER CAVNER MOVED THAT THE APPLICANT'S DISABILITY DID NOT RESULT FROM A PHYSICAL OR MENTAL CONDITION OR INJURY THAT EXISTED OR OCCURRED PRIOR TO THE APPLICANT'S PSPRS MEMBERSHIP DATE OF JULY 1, 2005. BOARD MEMBER PARKER DIGGS SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

BOARD MEMBER CAVNER MOVED TO APPROVE THE ACCIDENTAL DISABILITY RETIREMENT APPLICATION OF FIRE ENGINEER DAVID BOWMAN, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER SPRINGBORN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

3. **Motion to Recess into Executive Session for Discussion of the A.R.S. Sec. 38-844 Retirement Application of Fire Engineer David Bowman.**

Chairman Cross deemed it unnecessary to go into Executive Session.

4. **Review and Approval of Meeting Minutes—May 21, 2009.**

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE MAY 21, 2009 PSPRS FIRE LOCAL BOARD MEETING. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ZERO (0). BOARD MEMBER PARKER DIGGS ABSTAINED AND BOARD MEMBER BURG WAS ABSENT.

5. **Discussion and Vote on the DROP (Deferred Retirement Option Plan) Application of Deputy Fire Chief Richard Upham.**

Ms. Washington reported that Deputy Fire Chief Upham was entering the DROP with 4.192 years of service with the City of Scottsdale as well as 24.821 years of prior service, equaling a total of 29.013 years of service and would be receiving a monthly benefit of \$7,032.25.

She stated that Deputy Fire Chief Upham's DROP paperwork was in order and he would have a total of 34.013 years of service at the end of his five-year DROP period ending on or before June 30, 2014.

Chairman Cross expressed the Board's appreciation of Deputy Fire Chief Upham's 29 years of service to the State of Arizona.

BOARD MEMBER CAVNER MOVED TO APPROVE THE DEFERRED RETIREMENT OPTION PLAN APPLICATION OF DEPUTY FIRE CHIEF RICHARD UPHAM SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER PARKER DIGGS SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

6. Board Suggestions for Upcoming Agenda Items.

In response to Chairman Cross' request for future agenda items, Board Member Springborn expressed his concerns about the evaluation provided by Dr. Beghin in the IME of Mr. Bowman discussed earlier in today's meeting. He requested that staff research other medical organizations for future IME examinations and reports.

Board Member Springborn opined that the doctor made assumptions without evidence and stated that it was inappropriate to make such psychological determinations.

Ms. Washington explained that Columbia Medical has a host of doctors to choose from and agreed to restrict the use of Dr. Beghin for future IMEs. Chairman Cross agreed that the Board needed doctors to supply clear and concise answers in their IME reports and suggested that the topic be agendized as an action item for next month's meeting.

Board Member Springborn recalled past situations where IME reports had clear answers and other IME reports relating to more difficult circumstances.

ADJOURNMENT:

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 8:55 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Fire Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee